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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Matter of)
)
Broadband PCS C and F Block) WT Docket 97-82
Installment Payment Issues) DA 97-679
)
)

To: Wireless Telecommunications Bureau

**COMMENTS ON THE BROADBAND PCS C AND F BLOCK
INSTALLMENT PAYMENT ISSUES**

Pioneer Telephone Association, Inc. ("Pioneer"), submits its comments opposing the various proposals filed with the Federal Communications Commission ("FCC" or "Commission") to alter the Broadband PCS C and F Block installment payment arrangements as set forth in the Commission's rules.

Pioneer was a bidder in the C-Block PCS auction. Also, Pioneer is the licensee of eight D & E Blocks PCS licenses, high bidder on one Wireless Communications Service market, and licensee of a Cellular Radiotelephone Service license in Rural Service Areas in Colorado. Pioneer has plans to build out its PCS markets in the Basic Trading Areas of Kansas where it holds licenses. As a builder of telecommunications facilities and as an auction participant Pioneer is directly affected by any decision to alter the installment payment plan for C and F Block auction winners.

The C and F Block winners seeking a change in the installment payment plan seek to ease the burden of their indebtedness, even though they entered into the debt with complete awareness of how the interest rate would be determined. The winners had clear

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notice of the debt arrangement prior to their participation in the C and F Block PCS auctions.

Pioneer opposes any alteration of the installment payment plan as originally set forth prior to the auctions. Primarily, Pioneer objects to the proposition that the Commission's auction rules can be changed after the auction. Secondly, Pioneer objects to the prejudice caused to auction participants who, had they known what the rules would really be, would have bid and would have met their payment obligations using a different strategy. Finally, Pioneer objects to still another competitive advantage being bestowed upon an already favored class of licensees.

All auction participants were aware of the Commission's rules and all agreed to abide by them when applications to participate in the auction were submitted and when the winners applied for grant of the licenses.

All auction participants were aware before the auction the installment payments were to be paid quarterly without opportunities for deferral of payments or interest.^{1/} Market fluctuations are not a factor which should be a means for changing the rule. To backtrack and adjust the format for installment payments simply because, post-auction, participants want the benefit of a better terms, is an alteration of the ground rules of the auction. Installment plan participants do not suffer the

^{1/} Deferral for the first five years of the license term is proposed in a letter from Leonard S. Sawicki, Director FCC Affairs, MCI Telecommunications Corporation, to Mr. William F. Caton, Secretary, Federal Communications Commission (May 1, 1997).

possibility that the government will turn around and alter the installment terms to their *disadvantage*. Neither should the Commission set precedent for an expectation that the ground rules for an auction will be changed for installment plan participants to their advantage. Instability of payment terms will haunt future auctions.

The clarity of Section 24.711(b) is indisputable in McElroy Electronics Corporation v. Federal Communications Commission, 990 F.2d. 1351 (D.C. Cir.1993) the D.C. Circuit Court determined that the proper standard of review for interpretation of an agency action is whether after a "fair reading" of an order the reader would know or should know what is expected of him. McElroy at 1358. The court defines "fair reading" as, "reasonably comprehensible to people of good faith." McElroy at 1358. Here the rules in regard to the installment payment plan as set forth by the FCC could not be more clear. There is no ambiguity in the language or in context. A "fair reading" of Section 24.711(b) is completely comprehensible to any person. Pioneer objects to the impact that the various proposals, affecting a change in the rule, would have on those who participated in the auctions but who are not using the installment payment program. A post-auction change in the rules hands a distinct disadvantage to those participants. Had Pioneer known of the Commission's flexibility on installment payment terms, Pioneer could have bid higher, in more markets, and could have financed its obligations through the benefit of the various proposal being offered to the Commission. Instead, the outcome of

the auction is changed. Pioneer is not a C- Block licensee because it was not aware that the Commission's payment terms would be negotiable.

The court in McElroy cites its prior decision in Radio Athens, Inc. (WATH) v. FCC, 401 F.2d. 398,404 (D.C. Cir.1968) where the court stated that "it is beyond dispute that an applicant should not be placed in a position of going forward with an application without knowledge of requirements established by the Commission, and elementary fairness requires clarity of standards sufficient to apprise an applicant of what is expected." Elementary fairness requires that the rules not be changed after the fact so that an applicant's expectation is turned upside down.

Looking back, it is obvious that many auction participants may have changed their bidding strategy if they had been aware that the installment payment terms would be flexible. Some participants would have spent more money when bidding for licenses knowing that the interest rate could be altered, post-auction, by polling the installment plan participants and asking them what terms they would like to have on their installment note.

Installment plan participants are already receiving an advantage simply through their participation in the installment payment program. To further boost their advantage changes market forces to the harm of other businesses. Allowing these auction winners to pay over time assists many small businesses to afford the cost of the licenses, but it is unfair to further increase their advantage by lowering the amount they must pay through

altered installment terms or by other means.

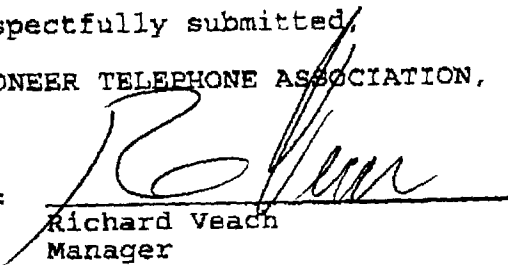
The Commission's post-auction manipulation of licensees' monetary obligations undermines the expectation of all auction participants that the rules of the auction are certain. The action changes the outcome of the auction and, in this instance, creates a surprise bonus for a class of licensees, all to the detriment of licensees who are not the beneficiaries of the Commission's unexpected benevolence. It is disturbing to see the government go back on its word, to change the terms of a transaction which were reached after many months of extended study and comment. In representation of the whole of the telecommunications industry and its body of consumers, the Federal Communications Commission should hold to its word on the terms of the C and F Block auction installment plan.

For the foregoing reasons, Pioneer urges the FCC to deny the requests for waiver of Section 24.711(b)(3) of the Commission's rules and enforce the previously prescribed installment terms upon C and F Block PCS license winners.

Respectfully submitted,

PIONEER TELEPHONE ASSOCIATION, INC. *

By:


Richard Veach
Manager

June 23, 1997

* This signature page is a photocopy, the original of which is in transit via U.S. mail. The original signature will be submitted to the Commission within the next few business days.